SPEECH

Daniel B. Gilman

OF

HON. L. F. S. FOSTER, OF CONNECTICUT,

ON

THE LECOMPTON CONSTITUTION;

DELIVERED

IN THE SENATE OF THE UNITED STATES, MARCH 8 AND 19, 1858.

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SPEECH.

MONDAY, *March* 8, 1858.

The Senate having under consideration, as in Committee of the Whole, the bill for the admission of Kansas into the Union as a State—

Mr. FOSTER said:

Mr. PRESIDENT: After the intimation which was given us by the honorable Senator from Missouri, representing the majority of the Territorial Committee, that the vote on this question is to be taken on Monday next, it struck me that those who proposed to be heard on this subject had better be prompt in their action. I certainly received it as kind in the honorable Senator to give us this early notice; for I was one of those who had been making some preparation to address the Senate upon the subject now pending. I have made some few notes and memoranda on the subject, but I had not expected to speak upon it to-day, and I have not those notes or memoranda here; but, sir, I have before me the constitution which it is proposed to impose on the people of Kansas by this body, and I desire to call the attention of the Senate for a few moments to that constitution, and to urge a few of the reasons why I, as a member of the Senate, can never vote to admit Kansas under that constitution with the provisions and principles which it contains, though everything else in regard to the subject was as I could wish it to be.

In the first place, I cannot vote to admit a State into this Confederacy which lies north of 36° 30′ north latitude, having slavery as a provision of its constitution. I recognize the Missouri compromise of 1820 as still binding upon the people of this country, notwithstanding the passage of the Kansas-Nebraska bill in 1854. I am one of those who mean to be bound by that compromise, to act upon it here, at least so far forth as never to vote for the admission of a State lying north of that line, which State proposes to establish African slavery. I believe that compromise was entered into in good faith. I believe that it conduced to the peace of the country for a long course of years. I believe there was no necessity for its repeal. I believe that its repeal was a violation of plighted faith. I believe it was an outrage upon the moral sense of the nation, and it ought not to have been done. I therefore will recognize the old compromise, and will never recognize the repeal.

Inasmuch as this constitution proposes to establish slavery in the future State of Kansas, and to establish it in a most offensive and obnoxious form—if that were all, I could not vote for its admission. The article to which I call the attention of the Senate is the seventh article of the Lecompton constitution, which is before us. The first section of that article reads thus:

"The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave, and its increase, is the same, and as inviolable as the right of the owner of any property whatever."

That section contains a principle which, in my judgment, is false in morals, false in politics, and false in law. I will never vote for the admission of a State into this Union with a provision so obnoxious as that. If we were admitting a State lying far South, there would be no necessity for the enunciation of a doctrine like that. Even although the State might tolerate and establish slavery, it need not do it in that most offensive form. It is flying in the face of Christendom in a manner which I cannot justify or tolerate. I do not believe that here, in the latter half of the nineteenth century of the Christian era, it is to be laid down as a fundamental principle in a constitution which is required to be republican in its form, that the right of property by man in man is prior to all constitutional law, and is as inviolable as the right to any property whatever. I believe that the enunciation of a principle so glaringly false as that, is a reproach and a shame to the age in which we live. It is going backward, in a very rapid manner, to barbarism, rather than forward to a higher civilization and greater freedom.

The other provisions in the same article of the constitution, in regard to the manner in which slavery shall be controlled by the Legislature, are exceedingly obnoxious to me. It is, however, particularly to the principle which is enunciated in the first section that I make more immediate objection.

I shall not, at this late hour of the day, go over

all the provisions of the constitution to which I make exception; but I will call attention to some few, besides the one to which I have already alluded. I find laid down, as a part of the bill of rights of this incipient State, this proposition:

"Free negroes shall not be permitted to live in this State under any circumstances."

I do not believe that a provision like that should be in a constitution which we are about to approve, or that such a constitution can be called republican in its form.

Mr. GREEN. I would remind the Senator that the Topeka constitution has a similar provision in it.

Mr. FOSTER. So far as I am advised, the Topeka constitution has never been adopted by the Senate, has never brought a State into this Union, and if it has any such provision in it as that, I apprehend it will never obtain my vote. I do not believe that the Topeka constitution has any such provision in it; but whether that constitution, or any other has, it makes no difference with me on this occasion.

Whether free negroes are citizens, or whether they can be citizens of the United States or not, it is admitted, this constitution admits, that they are men. The very clause of this constitution which creates slavery, and other portions of it, provide how slaves may become emancipated and be free men. Another provision of this instrumen is, that no free man shall be exiled from the State. Under this constitution, a man who is a slave may be emancipated by the laws of the State in a constitutional manner, and he becomes then of course, a freeman—a negro, it is true, but free by the constitution and the laws of the State of Kansas. That negro cannot be exiled from the State, because he is a free man. He cannot live in the State, because he is a negro and a free man. What is the result? He must be put to death. There is no question about the result at which we arrive. A slave may be emancipated and become a free negro, and he is then to be offered a sacrifice. The manner is not provided in the constitution, but he is to be offered a sacrifice. At all events he must be killed, for we must abide by the constitution; the Legislature can make no law which shall give the free negro a right to live a day, because there can be no law violating the constitution. The negro, when made free under the constitution and the laws of the State which originally made him a slave, is to be put to death. He is to be put to death because he has been made a free man, as it may be, against his will.

Is a constitution having provisions like these in it, republican in its form? If it be, it is certainly not republican in its spirit, and I am for going behind forms and looking at the substance. Where the constitution of a State has such gross, barbarous provisions as those to which I have called attention, I can never vote to add it to the constellation of American States.

Will it be said that no doubt the intention was that the negro could go out of the State? Why, sir, if the will of certain men is to control public affairs for the next twenty or fifty years, Kansas may be surrounded with slave States, and those slave States will each and all of them have the right, if this may be recognized as rightful and legal, to provide that no free negro shall ever come within their limits; and what will be the result? The negro, after he becomes free in Kansas, cannot get out of the State; he cannot pass beyond the line of the State. If he goes to Missouri, the law of Missouri may condemn him to death the moment he comes within its jurisdiction; so may the Territory of Nebraska, if that should become a State with this "blessing" of slavery attached to it, and it should be disposed to keep out free negroes. So of all other States beyond the line of Kansas.

Mr. GREEN. Let me make one remark, with the Senator's permission. More of the non-slaveholding States in the Union than of the slaveholding States, have provisions of law prohibiting free negroes from coming into their borders. I assert that here, and am responsible for the assertion. If the slave should even go through the State of Missouri, and get into Illinois, there is a prohibition—the very thing he is complaining of in Kansas.

Mr. FOSTER. So much the worse for the free negro. Should Kansas then be surrounded with free States, and the disposition of which the Senator speaks be carried out in those free States, there is no possible salvation for this negro; he must be killed. The gentleman does not help the constitution out of the difficulty.

Mr. GREEN. Does the Senator undertake to intimate that the law of Illinois, or any other of the non-slaveholding States, requires the free negro to be killed? If so, it is not correct; and I only mention this fact to show that the Senator's argument is an absurdity.

Mr. FOSTER. It may be to the honorable Senator an absurdity. I have not asserted that any of the States has made the penalty death for a free negro to enter. I have only been arguing that if a free negro attempts to stay in Kansas, the constitution, in so many words, requires him to be put to death. I have alluded to the fact that if that provision of the constitution be one rightful and proper, all surrounding States would have a right to pass a similar law making the penalty death for any free negro to come within the State; and if they should do so, I say there could be no possible escape for the negro; and if they should not do so, still, inasmuch as under this constitution no free man can be exiled from the State, he has therefore a right to remain; and if he should remain he must be put to death. While that constitution stands, the absurdity of the argument simply is this: that a black man shall not be permitted to live in the State free, under any circumstances. He may be made free, and there is no power known to the constitution to put him out; on the contrary, the constitution provides that he shall not be put out. Now, I beg the honorable Senator, who seems keen on the subject of absurdity, to point out what possible mode there is for a free black to live in the State of Kansas under these two provisions—that he shall not live in the State free, under any circumstances, and yet that there is no power known to the constitution to get him out?

Mr. GREEN. Do you want an answer?

Mr. FOSTER. Certainly, if the honorable Senator wishes to answer.

Mr. GREEN. If the Senator desires an answer, he shall have it. I answer that the same provision in Kansas for getting him out exists, independent of law, as exists in Illinois, to get him out of Illi-

nois, and other non-slaveholding States; and yet prohibition is as positive in those non-slaveholding States as it is in the State of Kansas; and more than that, it is not to be expected that a constitution will provide all the means to execute itself. There are a thousand provisions in the State constitutions, and in the United States Constitution, which require the aid of the legislative power to provide the means to execute and carry them out.

Mr. FOSTER. The honorable gentleman has failed to give an answer that at all meets the exigencies of the case. He refers me to the State of Illinois and other States where the provision, he says, is equally positive that free blacks shall not live, as it is here. There is no particular mode provided for getting the black out of the State. The answer simply removes the difficulty across the river; but if the difficulty exists there, it is just as great. I apprehend, however, that the constitution of Illinois does not contain exactly this same provision.

Mr. GREEN. It is the law of Illinois, not the constitution.

Mr. FOSTER. But here is a constitution which makes a man a slave and allows him to be made free, and then says when made free he shall not live in the State, and it contains another provision that no free man shall be exiled.

Mr. TRUMBULL. I do not wish at all to interfere in the discussion between the honorable Senator from Connecticut and the honorable Senator from Missouri, but I wish to say that there is no law in the State of Illinois providing that a free negro shall not live in the State.

Mr. GREEN. But there is a law that he shall not come in. Suppose he comes in: what do you do with him?

Mr. TRUMBULL. We have a provision for disposing of him if he comes into the State. We have a statute law on that subject.

Mr. GREEN. How do you dispose of him? You set him up and sell him.

Mr. TRUMBULL. Under our statutes we hire him.

Mr. GREEN. You sell him for a time.

Mr. TRUMBULL. He is hired out for a particular length of time.

Mr. GREEN. Kansas will do the same thing.

Mr. TRUMBULL. It is a different provision.

Mr. FOSTER. If Kansas does the same thing, she will break her constitution.

Mr. BRODERICK. Will the Senator from Connecticut yield me the floor for a moment?

Mr. FOSTER. Certainly.

Mr. BRODERICK. I understand that it is the desire of the majority on this side of the Chamber to have an executive session; and that being the case, I ask the Senator from Connecticut to suspend his remarks until to-morrow. It is now four o'clock.

Mr. FOSTER. I would give way with great pleasure to the request of the honorable Senator from California, but for the fact that I shall occupy only a short time longer.

Mr. BRODERICK. I hope the Senator will suspend his remarks until to-morrow.

Several SENATORS. Oh, no! go on now.

Mr. FOSTER. I shall not occupy longer than ten minutes. I am exceedingly sorry to disoblige the Senator from California, if my going on now does disoblige him; but as I have only a few words to say, I may as well say them now.

Mr. BRODERICK. I would rather hear the Senator at greater length, and therefore I hope he will consent to postpone his remarks until to-morrow.

Mr. FOSTER. The honorable Senator from Illinois, I have no doubt, has stated correctly the law of that State; but, in reply, the honorable Senator from Missouri says the State of Kansas would take the same course as the honorable Senator from Illinois says is provided under the law of Illinois in regard to free blacks. If so, I repeat, the State of Kansas would violate the provision of her constitution. Although hiring a man to service, as a penalty for the violation of the law, is unquestionably a severe penalty, yet it is less severe than death; and here the penalty, if it is anything, is and must be death. They have no more right to hire the man out, or to sell him and make him a slave over again, than they have to do any other possible act that the constitution has prohibited; for it is provided, in express terms, "free negroes shall not be permitted to live in the State under any circumstances." Besides, the difficulty is greater than the Senator from Missouri seems to suppose, comparing the provisions of this inchoate State with the State of Illinois, because the law of Illinois, as I understand the honorable Senator from that State, simply prohibits under penalties the coming into the State of a certain class of persons. That is not the case here. This constitution provides for a man's being created, so to speak, a free black on the soil of the State, who was there lawfully as a slave; it may be against his will, and we are to presume against his will. Being there on the soil of the State against his will, under the law he is made free, as it may be, against his will: and the penalty for being free is death. I say that is an arbitrary, despotic, outrageous principle—one which can never be tolerated in a country that has any idea of genuine liberty; and this is to be on a soil of all others in the United States blessed with perfect freedom.

Mr. MASON. Will the Senator allow me to ask him a question, not for my information alone, but for the information of my people?

Mr. FOSTER. Certainly.

Mr. MASON. I understand him to make objections to the constitution of Kansas, because of what he alleges is contained in that constitution as to the policy of the people of Kansas in regard to the condition of those who are slaves. Does the Senator understand that the Congress of the United States can look into a State constitution to see what the policy of the people of that State is in regard to the condition of service, whether for life or for any other time, and to reject a State because a Senator may disapprove its policy?

Mr. FOSTER. I do understand that the Congress of the United States when called upon by a Territory to admit that Territory into the constellation of States, as one of the members of this Federal Union, if it has in its constitution principles at war with those which underlie our Constitution, at war with the principles of our Declaration of Independence, at war with the plainest principles of liberty, that such a constitution cannot be republican even in its form, and is therefore objectionable distinctly on that ground—that we

cannot permit a State with such a constitution to become a member of this Confederacy.

Mr. MASON. Will the gentleman indulge me a moment?

Mr. FOSTER. Certainly.

Mr. MASON. I am glad to hear his answer. It will throw a flood of light on this question before the people where there is this condition of African slavery. I understand the Senator to say that, conceding that Congress can look into the constitution of a State applying for admission only to see that it is republican in form, it is his judgment that where the condition of slavery is recognized, it is not republican in form, and therefore not to be admitted.

Mr. FOSTER. I have not asserted such a principle.

Mr. MASON. I understood that to be the conclusion at which the Senator arrived.

Mr. FOSTER. The gentleman may have drawn that as an inference, and if the language implies that, it is a fair inference; but that is not my understanding of the language, and with entire deference to the honorable Senator from Virginia, I do not think my language is fairly susceptible of that construction.

Mr. MASON. I hope the Senator, then, will restate it. I should like to be disabused of the inference I drew.

Mr. FOSTER. I may not restate it in the precise terms in which I stated it before, but I will do so as nearly as my recollection will enable me. My statement, in substance, was this: that where a constitution contained principles that were at war with the principles of our Federal Constitution, at war with the principles of our Declaration of Independence, at war with the plainest principles of freedom and liberty, recognized the world over, we could not call such a constitution republican in its form; and it would, therefore, be obnoxious to that objection, and the State would, therefore, not be entitled to admission.

Mr. MASON. Because it is not republican.

Mr. FOSTER. Because it is not republican, and because it is not recognizing the principles of freedom on which our Government is based. I by no means assert that, because a State constitution, or the constitution of an incipient State, in some form may recognize the existence of African slavery on its soil, that constitutes an insurmountable reason why we cannot admit it as a State. I should greatly prefer that all States would come in free; but I by no means go to the extent of saying that, under all circumstances, if that provision were wanting, for that reason alone a State should be kept out. I think it would be impolitic for a State to come in with a provision recognizing slavery in any form; but very clear am I that, when a State lays down a provision of the sort which I have read, it goes far beyond any exigency in regard to establishing African slavery. If it merely said what various State constitutions may at present say, in regard to the right of the master to hold slaves under certain circumstances, within that State establishing, creating the "peculiar institution;" it might not be obnoxious to the exception I am making to this provision. This lays down a principle, a fundamental principle, a radical principle, which is either false or true. I say it is false; and I say it without regard at all to the right of the several States now in the Union, or the right of those that may hereafter come in, to hold slaves. This principle is independent of that. It goes over and beyond it, and that is what I object to. I am not for interfering with the relation of master and slave in the honorable Senator's State. The trampling of this principle under foot does not at all affect the right of any State in the Union, in my judgment, to hold their slaves under their State constitutions. I meddle not with those relations, and would do nothing whatever to disturb them; but, sir, when a State comes here with a principle of this sort in its constitution, it challenges either my assent or denial; and I am compelled to deny its truth. A constitution containing such a principle is neither republican in form nor in spirit.

Mr. BRODERICK. Will the Senator from Connecticut yield for a moment? It is evident, from the interrogatories which have been put to the Senator, that he will occupy a great deal more of the time of the Senate this afternoon than he imagines; and therefore I ask him again to give way, for the purpose of going into executive session, so that he can have the floor to-morrow.

Mr. FOSTER. I think I should have been through in this time if the honorable Senators had not interrupted me. I shall be through in five minutes.

Mr. BRODERICK. A great many Senators on this side of the House may put questions to the gentleman, and to answer would occupy more time than he imagines.

Mr. FOSTER. If such a case should happen, I assure the Senator I will take occasion at another time to answer them.

Mr. BRODERICK. I would consider it a favor if the Senator would give way for an executive session.

Several SENATORS, (to Mr. FOSTER.) Go on.

The PRESIDING OFFICER, (Mr. STUART.) The Chair considers that the Senator from Connecticut declines to yield the floor.

Mr. FOSTER. I do so, I assure the Senator from California, with every disposition to oblige him, and I shall disoblige him but for a few moments longer.

There is another provision in this constitution, which is the fourteenth section of the schedule, providing—

"After the year 1864, whenever the Legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two thirds of the members of each House concurring, to vote for or against calling a convention; and if it shall appear that a majority of all citizens of the State have voted for a convention, the Legislature shall, at its next regular session, call a convention, to consist of as many members as there may be in the House of Representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the Representatives; said delegates so elected, shall meet within three months after said election, for the purpose of revising, amending, or changing, the constitution, but no alteration shall be made to affect the rights of property in the ownership of slaves."

That is an exceedingly obnoxious feature in this constitution, in my judgment. It is enough to condemn the whole instrument. I by no means agree with gentlemen who adopt the principle that a State constitution may be changed with such surprising facility as they argue that it may. I understand the honorable Senator from Missouri (for whose opinion and judgment as a lawyer, I

certainly have respect) to say that the people of a State may change their constitution in "any legal way." It is a most indefinite expression. No doubt a State may change its constitution in any *legal way*. The question is, what is a legal way? The way pointed out in the constitution is the legal way in which the constitution of the State of Kansas, should it become a State, may be changed; and that, I assert, is the only legal mode in which that constitution, if it be adopted, can be changed. Granting that it may possibly be changed in some other way, and there be no bloodshed, it will still be revolution.

But, sir, it provides that "no alteration shall be made to affect the rights of property in the ownership of slaves;" that is to say, slavery shall be a perpetual institution in the State that is to be the State of Kansas; it shall exist there through all time. That is the distinct and direct provision of this constitution. Now, I apprehend the honorable Senator from Missouri will not say that the Legislature of the State may call a convention of the people of that State, and if the people come together in that convention and vote to abolish slavery, or rather make a constitution containing an article which abolishes slavery, slavery would then be abolished in the State of Kansas. I apprehend the honorable Senator from Missouri will not say that can be done.

Mr. GREEN rose.

Mr. FOSTER. I have promised the honorable Senator from California to be brief, and if I were to be interrupted now it would prevent me from keeping my promise. If the gentleman will answer categorically, yes or no, it will take no time, and he can answer. Unless his response amounts to that I might not understand it. If the question is capable of being answered by yes or no, I shall understand it; but if it takes more words I might misunderstand it; and therefore perhaps it is not worth while now for me to give way to the Senator.

I agree that there have been States in this Confederacy which have changed their constitutions in a manner not provided for in the constitution; and those States have been alluded to at various times to prove what is claimed to be an inalienable right of the people to alter, amend, or abolish their form of government whenever they please; but does it prove it? Because the State of New York, or any other State, has made an alteration, or has actually abolished an existing constitution, in a manner not provided for in that constitution, does it prove that such a change is legal—is not revolutionary? No, sir; it does not. It simply proves that those portions of the people who did not agree to that alteration, if there were any such, acquiesced in the change. Does anybody believe that the slaveholders in Kansas would acquiesce in the abolition of slavery in that State by a convention called by the Legislature emanating from the people? No, sir; nobody can believe it. If it be not within the power of the people under these circumstances to abolish slavery except according to the terms and provisions of the constitution, neither can they do anything else contrary to the provisions of the constitution without the acquiescence of the people. With that acquiescence it makes a bloodless revolution, but nevertheless a revolution.

In the Territory of Kansas, we know that the people are exceedingly divided in their sentiments in regard to government. We know that a very large portion—nineteen twentieths of the people of that Territory, as I believe—are in favor of having it a free State. One twentieth may be in favor of having it a slave State. Here, however, is a constitution which establishes slavery in it forever. Now, I say, establish this constitution, and it can never be lawfully abolished, except by consent of every slaveholder in the State of Kansas. If it can never be lawfully abolished except by the consent of every slaveholder in the State, it simply recognizes this principle, that where a right is secured under a constitution, and a mode is provided in that constitution for amending or altering it, that right can never be affected or taken away, except in the manner provided in the constitution itself. The acquiescence of every one whose right is to be affected has, no doubt, the same effect. And this principle is applicable not only to the owner of property, but the holder of office, as the judge of a court, a sheriff, or any other officer who might be holding an office under the old constitution. If the people, under this inalienable right that is talked about, should make a new constitution, elect new officers, ordain and establish new courts of justice, and set up a new State government, all those who are holding office under the former constitution and under the old government, unless they chose to give up their positions and acquiesce in this revolution of their government, would be lawfully in the places to which they had been appointed under the original constitution and under the original law, and could call upon the Executive of the United States, if they were about to be forcibly removed from their offices, or if their legal behests were not obeyed, and the Executive of the United States would be bound to call in the physical force of the country, the militia—the Army of the United States—to carry out and to execute the mandates and judgments of the original and lawful legal tribunals under the old constitution, and never allow those tribunals or those officers legally in power to be overthrown and displaced by the new claimants. Would the Supreme Court allow what gentlemen here call "property" to be disposed of by the will of the majority in any other manner than as provided in this constitution? No, sir; nobody believes it; and that is a test of the question, because there are other rights as dear as the right to property; and if that may not be done there is an end of this loose talk, as it seems to me, about the inalienable right of the people to govern themselves.

I believe in that right, Mr. President, as religiously as any other man; and I believe that when the people come together and make a compact of government, under which they agree to live, and prescribe how they may change it, it is their will and pleasure so to make it, and they are bound by it. And it is because they have this inalienable right that they are bound by it. It is their government; they have a right to make it as they please, and it is made to protect the rights of the minority. That is the object of a constitution. The very purpose of the instrument is to protect the rights of those who, aside from the constitution, would not have the power to protect them.

selves, and not to allow their rights to be taken away at the will of the majority. Here is a compact. Under that compact, laws are to be made and administered; under it; not outside of it; not over it; otherwise there would be no safety. We should all live under a despotism if we had not a Constitution limiting the powers of Government. If that Constitution is a nose of wax in the hands of those who may abolish it when they please, where is liberty at all? It is one of the modes in which the rights of men are perverted when we talk about the right to abolish their form of government. It is a right to abolish forms of government which have been imposed upon them, which are distasteful to them, which they have had no hand in making; but when they have made a constitution, they ought to live under it or change it in the manner in which they have agreed to change it. Such have always been the decisions everywhere, so far as I have known, and such I trust they always will be.

I have now stated, Mr. President, in a very desultory and imperfect manner, my objections to some features, not to all, of this constitution. These, of themselves, if there were no others, would constitute a conclusive reason why I could never vote for the passage of this bill. I have other reasons, equally satisfactory, equally strong, to my own mind; and I have made some preparation, as I intimated in the early part of my remarks, to be heard on those points at some time before the vote is taken in the Senate. I may forego, or I may avail myself of that opportunity. If it comes to be a question of endurance here, and we are to sit at nights, until the physical power of the one party or the other shall yield, I shall probably, if God spares my life and health, take an opportunity to be heard on certain other questions connected with the admission of Kansas under this constitution; but, not knowing what might befall me before the vote may be taken, I wished to be heard now, even in this very imperfect manner, on these patent objections to the instrument before us, lest by possibility the vote might be taken here, and my voice never be uplifted against this most atrocious, high-handed act of usurpation. Such will be the character of the act when consummated; the consummation will be when we impose this constitution upon the people of Kansas. I say "impose" it upon them, because I take great pleasure in saying that this constitution—obnoxious, outrageous, infamous as it is—was never made, and has never been assented to by the people of the Territory of Kansas. They loathe it, as I do. They scorn its very name. They detest its principles, its details, its origin; and so do I. I should regret that the people of any Territory within the limits of these United States could, of their own free will, come before the Congress of the United States with a constitution of this description, and ask to be admitted as a member of this Confederacy under it. I should regret it, because I should be compelled to believe that a people who really could, in this age of the world, willingly submit to, and sit down under, a constitution like this, were not fit for a free government, and ought not to become members, as a State, of the great Confederacy called the United States of America.

FRIDAY, *March* 19, 1858.

The Senate having under consideration the same bill—

Mr. FOSTER said:

Mr. PRESIDENT: The objections I have heretofore urged against this high measure were confined exclusively to what seemed to me to be the obnoxious features apparent on the face of the proposed constitution. At the same time, I recognized other objections, strong and conclusive to my own mind, against this measure; and I intimated a purpose, on another occasion, should opportunity offer, to ask the indulgence of the Senate to present my views more at large, and on other points connected with this most important subject. To do this, and as briefly as possible, is my present design.

The real question at issue here can certainly be brought within very narrow limits. Such, however, has not been the course of the discussion; that has taken the widest range. Slavery and its incidents have of course attracted a large share of attention; the question of union and disunion has not been neglected; aggressions of the North on the South, and the South on the North, have been adverted to; and the power and resources of the different sections of our country have been exhibited, not altogether to place them in friendly competition, but rather in hostile array.

Mr. President, I regret all this. It would be unbecoming in me to lecture any Senator here on the proprieties of debate. I assume no such ungracious office. Others have judged these topics proper and necessary in this discussion; possibly they are. If the necessity exists, I must be permitted to say that I regret that necessity.

Of slavery, sir, I propose now to say nothing; of union and disunion, and our mutual aggressions, nothing; of the resources, productions, and strength of the different sections of our country, very little. I glory in our country—in its united strength as one country. It is a magnificent, a majestic country; it is my own native country. I glory in each and every of its sections, as parts of one great whole. In any section, when put in array against any other section, I glory not.

A lesson of wisdom is taught us by the cunning hand of the artificer who wrought out the marble mantels back of the chair you occupy, Mr. President, in this Chamber. My attention was first called to them by the late Senator from Delaware, Mr. Clayton, whose death made a great breach in this body and in the councils of this country. In words too impressive to be forgotten, and but a short time before his death, he asked me to notice the fact that the bundle of rods chiseled on the one defied the efforts of the mightiest giant to break them, because bound together; on the other, taken separately, they were snapped asunder by a boy's hand.

Our strength is in our union. Which section would be the stronger, and which the weaker, in the event of disunion, I will not undertake to decide. The subject has no attractions for me. Those whose tastes lead them in that direction may make the calculation. Late be the day that proves either their truth or their falsehood.

It is, sir, a mischievous error, a fatal mistake, to suppose that any portion of this Union is not dependent on other parts. We are mutually de-

pendent. Take the great staple of the South—cotton—the "king," as the honorable Senator from South Carolina, [Mr. HAMMOND,] in his speech the other day, so complacently styled it. What Warwick was the "king-maker" of cotton? Who gave "King Cotton" his crown and scepter? The inventive genius, the mighty hand of Eli Whitney, of Connecticut. But for him, the kingdom of cotton would be yet to come. The honorable Senator was very full, and, I presume, very accurate, in his statistics; he will pardon me for suggesting that he omitted one very important item, and that is, how much did the invention of Whitney—Whitney, of Connecticut—add to the value of all the cotton lands in the southern States? I cannot answer the question myself; perhaps the honorable Senator can; and though in his calculations he deals with very large sums of money, I hazard the assertion that this amount, when ascertained, will be the largest of all. I have alluded to this, Mr. President, to illustrate my position that we are mutually dependent, even where we may, perhaps, feel that we are most independent.

I expressed a determination to say but little as to the relative resources and strength of the different sections of our country. I intend to carry out that determination. As the honorable Senator from South Carolina seemed to place the claims of the South mainly on a single production—cotton—I could not but recall to mind the fact that it is but a few years that cotton has been grown in any considerable quantity in this country. It is no longer ago than about 1790, that a few bales of cotton on board an American vessel at Liverpool were seized by the revenue officers, because articles not the growth of our country could not be imported by American vessels; and this, though claimed to be the product of the United States, was not believed to be so. So great are the changes in sixty years. Within that period in the future, may not this staple be cultivated to a great extent in portions of the globe now producing little or none? The reign of kings is proverbially brief in our times—that of "King Cotton" may not be an exception. And if it should, he may erect his throne and hold his court far nearer the gates of the Orient than the plains of Carolina. We are a republican people—not fond of kings, crowns, thrones, and scepters.

It is not for any lack of confidence in the power or resources of my own immediate section that I refrain from pursuing this portion of the subject. It is not, in my judgment, germane to the matter in hand; and I therefore dismiss it with the single remark, that the South is no doubt strong—strong in what it has pleased the God of nature to do for that section in soil and productions. The North is no doubt strong—strong in what it has pleased the God of nature to enable its people to do for themselves.

To bring this discussion within its just limits, to decide the question involved on its real merits, we have but to determine these simple points: Is the constitution of government proposed for the new State the work of the people to be affected by it? Is that constitution of such a character as to harmonize with the principles on which our Government rests? If both these questions can be answered affirmatively, the State should be admitted; if either is answered negatively, it should not be admitted.

In discussing these, indeed in discussing any questions connected with this subject-matter, I am aware that I am entering a field which has been gleaned by abler hands than mine. Nothing new, perhaps, is left to be said that can be said appropriately to the subject. I may say, however, that it is assented to on all sides of the Chamber, that this constitution ought to be the embodiment of the people's will before we can admit this State under this constitution. All, I say, assent to that proposition; but, while they do so, they, almost in the same breath, fritter it away by the manner in which they tell us the will of the people may be ascertained. There are certain forms, more or less technical, or solemn, or imposing, which we are to take as proofs. The constitution here before us is surrounded by certain forms, which, in the opinion of some gentlemen, conclude us from going behind them to ascertain what the will of the people really is.

Does not this, Mr. President, instead of making it our duty to ascertain the real will of the people, simply make it our duty to see whether certain forms have been complied with? Is that our whole duty in the premises? Forms may be simulated. They are, as I believe, in this case. We are always in danger of being imposed upon by forms. I have hoped I never should hear, in the Senate of the United States, on a question whether a State should be added to the Confederacy, that any form, no matter how solemn or how imposing, should intervene between us and the will of the people whom we are called to organize into a new State. There is danger, great danger, if we allow any partition to be built up between us and the will of the people in such a case as this. No wall should be considered so high or so thick that we were not at liberty to look over it and through it; not only at liberty so to do, but, faithfully to discharge our constitutional duties, I believe we are bound so to do. It is not enough that we have certain evidences before us of the will of the people. We are to be satisfied that those evidences prove the truth. We are not to be satisfied with any form of evidence short of the actual truth. Gentlemen, however, insist that a constitution coming, as it is claimed this does, from a convention, that convention having been called by the Territorial Legislature, that Legislature having been organized under the organic act creating the Territory, comes to us under such sanctions as that, the work of ascertaining the people's will is already done by these forms.

Now, Mr. President, it becomes necessary in this state of things, to see what these forms really mean, and how much real authority attaches to them, at least, in this particular case. This convention held at Lecompton which made this constitution, was called, I believe, by the second Territorial Legislature, so styled of the Territory of Kansas. All of course, so far as validity and constitutional authority goes, depends upon the character of the first Territorial Legislature. What evidences have we before us in regard to the character of that assemblage? Was it what it purports to have been—the Territorial Legislature of the people of Kansas, organized under the act styled the Kansas-Nebraska bill? On that subject I am aware there is a contrariety of opinion.

To my mind, however, the evidence is full and satisfactory that that Legislature was in no proper sense the Territorial Legislature of Kansas.

It appears from an examination made under the authority of the House of Representatives that in November, 1854, there was an election in Kansas for a congressional Delegate. The pro-slavery party, as it was called, at that election polled twenty-two hundred and fifty-eight votes, and of those there were illegal seventeen hundred and twenty-nine, leaving of legal votes at that election polled by that party five hundred and twenty-nine only. The people of the Territory, generally, took but little interest in that election; not more than half of the people of the Territory authorized to vote voted at all. In February and March, 1855, a census was taken, and that census showed of voters in the Territory twenty-nine hundred and five. On the 30th of March, 1855, when the election for the Territorial Legislature was had, just after the census was taken, as I have stated, which was completed in March, 1855, showing twenty-nine hundred and five voters only—the returns show that the pro-slavery party polled fifty-four hundred and twenty-seven votes, of which it is shown were illegal forty-nine hundred and eight, leaving only of these fifty-four hundred and twenty-seven votes polled by their party the number of five hundred and nineteen legal votes. If these facts are true, can anybody say that that was a Legislature entitled to any regard or respect as the Legislature of the Territory of Kansas? The same authority to which I have just adverted, the authority of the House of Representatives, speaks on this subject in this manner, through their committee. They say:

"*First.* That each election in the Territory, held under the organic or alleged territorial law, has been carried by organized invasion from the State of Missouri, by which the people of the Territory have been prevented from exercising the rights secured to them by the organic law.

"*Second.* That the alleged Territorial Legislature was an illegally constituted body, and had no power to pass valid laws, and their enactments are, therefore, null and void.

"*Third.* That these alleged laws have not, as a general thing, been used to protect persons and property, and to punish wrong, but for unlawful purposes."

Such, sir, as I claim, was the character of that so-called Territorial Legislature. I am aware that this is denied; but it is denied, as it seems to me, in the face of evidence which ought to satisfy any candid, unprejudiced mind. This by no means is the only evidence. I allude to it as being evidence, as it seems to me, entitled to respect in this body; coming, as it does, from a coördinate branch of this national Legislature. It is not, as it seems to me, enough to say that this is simply the offspring of party spirit, and is not in fact true. That may be said of any fact proved ever so clearly, ever so solemnly. It may be denied; but, unless there is evidence of its falsity, unless there is something far stronger than a simple denial, I ask whether unprejudiced minds can fail to come to the conclusion that this Legislature was really a usurpation; that those who came into that Territory, conquered the Territory as directly through the ballot-box as any people were ever conquered through the cartridge-box? A subjugation of a people through the ballot-box is far more complete and perfect than it ever can be through the cartridge-box. Where a people are conquered through the ballot-box, the forms of law over them are continued, and the subjugation appears under a more mitigated form than when the arm of a conqueror is openly and palpably stretched out over them; but the actual subjugation, I repeat, is more complete.

Not only is this denied, however, as a matter of fact, but it is also said that, even if the fact be true, it is now too late, and that this is not the tribunal to examine those facts. We are concluded, it is said, by the action of this Legislature itself. The question of their election, or the election of any members of that body, we are told, must have been decided by the Legislature itself, and at all events that body is now to be considered as having been a lawful Legislature. If I am right in the claim I make, that the Legislature was a direct usurpation, the idea of submitting the question of usurpation or not to the usurpers themselves, is little less than a mockery. The present Emperor of France, I believe, claims his throne under an election by the people of that country. Some of the inhabitants have questioned whether that election was entirely fair and legal; but did it ever occur to any of the inventive geniuses of France to submit the question of the legality of the election to his Imperial Majesty, and did it ever occur to anybody that, until it was submitted to him and decided by him, the people were absolutely prevented from questioning the legality? What is the difference between one usurper and a multitude of usurpers in point of principle? Why should we submit the question of usurpation to the many and not to the one? I think it would be far better, and I should greatly prefer, under the circumstances, to submit it to the one; for where there is only one, there is a sense, even in abandoned men, to some extent, of individual responsibility; where there is a body of men together they will do acts which each alone would scorn to do by himself. There is no sense of personal responsibility in the one case, and there is some in the other.

Mr. President, I have endeavored to show that this Legislature was elected under such circumstances as that it was a perfectly unauthorized body, an illegal body, a body having no authority to enact laws for any people on the face of the earth; and to answer, so far as I have answered, the objection that this tribunal cannot pass upon that question. My argument, however, permits me to waive the objection, and to admit that this so-called Legislature was a legal tribunal, and clothed with all the authority with which a Legislature could be clothed under the organic act; and yet I arrive at the same result upon principles and authorities which seem to me perfectly incontrovertible, in regard to the validity and force with which this constitution comes before us; for I hold it to be established as a perfectly settled principle, in our Government, that a Territorial Legislature cannot call a convention which shall have any authority whatever to institute proceedings to create a State government. It is (and this certainly would strike every mind on reflection) an inadmissible principle that the territorial government is authorized, in and of itself, to institute a government to overthrow itself. I am not going to argue that question at any length. I allude to authorities on this subject which seem to me cannot be controverted. They have been alluded to before. I allude to the authority of Attorney General Butler, during General Jackson's administration, in regard to

the then Territory, now State, of Arkansas. The same question arose at that time that arises now, in regard to the power of a Territorial Legislature to institute proceedings creating a State government. The Attorney General, supposed, I take it, to speak the language of the Cabinet and the Administration, says on this subject:

"To suppose that the legislative powers granted to the General Assembly include the authority to abrogate, alter, or modify the territorial government established by the act of Congress, and of which the Assembly is a constituent part, would be manifestly absurd. The act of Congress, so far as it is consistent with the Constitution of the United States, and with the treaty by which the territory, as a part of Louisiana, was ceded to the United States, is the supreme law of the Territory; it is paramount to the power of the Territorial Legislature, and can only be revoked or altered by the authority from which it emanated. The General Assembly and the people of the Territory are as much bound by its provisions, and as incapable of abrogating them, as the Legislatures and people of the American States are bound by and incapable of abrogating the Constitution of the United States. It is also a maxim of universal law, that when a particular thing is prohibited by law, all means, attempts, or contrivances to affect such thing are also prohibited. Consequently, it is not in the power of the General Assembly of Arkansas to pass any law for the purpose of electing members to form a constitution and State government, nor to do any other act, directly or indirectly, to create such new government. Every such law, even though it were approved by the Governor of the Territory, would be null and void. If passed by them, notwithstanding his veto, by a vote of two thirds of each branch, it would still be equally void."

Well, Mr. President, surely that covers the whole ground, unless there be something in the organic act—the Kansas-Nebraska act—variant from the act which incorporated the Territory of Arkansas, of which I may say a word presently. To my mind, there is, in this regard, no difference. The cases stand on the same ground, and are to be governed by the same rule. If so, even if this Territorial Legislature had called this convention in the most solemn and technical manner, and the people had elected their delegates to the convention freely and lawfully, without obstruction, and all who were qualified had voted, who chose to vote, and no others, still, a constitution so made by such a convention, would possess no authority. It would be simply a petition or a memorial to Congress for admission into the Union, clothed with no higher sanction than an instrument made by any other equally large number of the citizens of the Territory.

We have, moreover, the high authority of the gentleman who is now the President of the United States. When the admission of Michigan into the Union was under discussion here, Mr. Buchanan, who was then a prominent member of this body, on this same question, expressed these opinions:

"We ought not to apply the rigid rules of abstract political science too rigorously to such cases. It has been our practice heretofore to treat our infant Territories with parental care, to nurse them with kindness, and when they had attained the age of manhood, to admit them into the family without requiring from them a rigid adherence to forms. The great questions to be decided are: Do they contain a sufficient population? Have they adopted a republican constitution? And are they willing to enter the Union upon the terms which we propose? If so, all the preliminary proceedings have been considered but mere forms, which we have waived in repealed instances. They are but the scaffolding of the building, which is of no further use after the edifice is complete. We have pursued this course in regard to Tennessee, to Arkansas, and even to Michigan. No Senator will pretend that their Territorial Legislatures had any right whatever to pass laws enabling the people to elect delegates to a convention for the purpose of forming a State constitution. It was an act of usurpation on their part."

And yet, sir, notwithstanding those plain, direct, and unequivocal averments, it is now insisted, and pertinaciously insisted, that because a Legislature has called a convention and that convention has formed a constitution, we are bound to take that constitution as embodying the will of the people, and cannot go behind these forms. As I said, I believe the first Territorial Legislature was a usurpation, and we all know that usurpation begets usurpation, and only usurpation; and the little finger of the offspring is frequently thicker than the loins of the parent. What began in usurpation strengthened in usurpation, and this constitution, vauntingly spoken of as it may be here, as embodying the will of the people of Kansas, has its origin in usurpation, and nothing but usurpation.

It has, however, been intimated, and more than intimated, that in the organic act—the Kansas-Nebraska bill—power was given to the people of Kansas to a more enlarged extent than was given to these Territories to which I have been calling attention. Efforts have been made to show that the Kansas and Nebraska act was an enabling act, so called. This question has been answered most triumphantly, as it seems to me, on both sides of this Chamber. I do not propose to add anything—I could not, however earnestly I might attempt it—to the force of that answer. I will say this, however, Mr. President, that if this claim was correct, if the Kansas-Nebraska bill contained directly authority to the people through their Legislature to call a convention and form a constitution, and bring that constitution here in order that the new State might be admitted into the Union, I submit, with great confidence, that it would be the duty of this Senate still to ask the question, is this constitution acceptable to the people who are to be affected by it? Nothing short of an honest answer in the affirmative to that question could justify us, even then, in taking another State into this Union, no matter what was the character of her constitution.

I repeat what I have said before, that no form should be substituted for the substance; for it is perfectly within the bounds not only of possibility, but of probability, that a convention, called ever so legally, formally, and solemnly, elected ever so fairly, consisting of men ever so capable and respectable, may after all fail in drafting an instrument which the people who are to live under it are willing to recognize as their constitution; and although the people may either inadvertently or deliberately—I care not which—bestow on a convention the authority to make for them a constitution without submitting it to them, or part, so to speak, with the sovereignty which was in them, and transfer it to a convention—although under such circumstances, so far as the people themselves are concerned, if nothing more were in the case, it might be the constitution of the people, still, if, as in this case, a constitution so formed has to come before another tribunal, and that tribunal are bound by their official duty before they admit the Territory as a State, under that constitution, to be satisfied that that constitution embodies the will of the people, they are not justified without first ascertaining that it is the will of the people, notwithstanding all these forms. We are

to go behind the convention even then, because our duty is imperative. We cannot, unless we are prepared to do an act of tyranny, impose a constitution on a people who we know would not accept it if they had an opportunity to accept or to reject it. Granting all that is claimed in regard to this, granting that this Legislature, the original one and the subsequent one, have all been legally elected, and are, to all intents and purposes, what they purport to be; granting that the Kansas-Nebraska bill is an enabling act; that the census, that everything, which, as I believe, is now actually tainted with fraud and corruption, were all sound; granting all that, we cannot, I repeat, unless we are prepared to do an act of tyranny, impose this constitution on the people of Kansas, because we know as well as we know that we are living men, that, if this constitution were submitted to the people of Kansas to-day, a great and overwhelming majority of them would repudiate it, and trample it under their feet.

In this state of things, Mr. President, I care not what forms surround this instrument. I for one am not prepared to do an act which is despotic and tyrannical, and shelter myself behind forms and shadows which must prove unsubstantial. Where is it found that this high tribunal is compelled to submit to these technical, and I must say, to some extent, absurd rules? Where is the work on pleading behind which we can or should shelter ourselves when we are performing one of the highest—the highest possibly—of our constitutional functions, the creation of a new State, an empire State, a State which I trust will uphold millions of happy people when we are all gathered to our fathers? Is it in the text books of the English or American law that we find any principle which controls this high tribunal in this most important of its high duties? Shall we look into Chitty, or Gould, or Stephens, and find some technical rule of pleading which prevents us from looking at the truth? I trust not.

Whether, then, we regard the Legislature which called the convention as a legal or illegal body; whether the organic act was an enabling act or not; whether we regard the members of the convention as having been fairly apportioned and legally elected, or otherwise; whether it was the understanding that the constitution, when prepared, should be submitted to the people or not, the same question after all comes back to us: is this constitution the embodiment of the people's will? That it is not, is most conclusively shown from various sources of proof. I need not pause to enumerate them. The vote of the people on the 4th of January last, taken, let it be remembered, under the authority of the Legislature of the Territory, showed a majority against the constitution of ten thousand and sixty-four votes. This surely will convince any one who is not predetermined not to be convinced, that the people of Kansas oppose this constitution.

The other day, under somewhat inauspicious circumstances, I addressed the Senate upon the objections that were apparent to me on the face of this constitution. The honorable Senator from Missouri, who sits furthest from me, [Mr. Polk,] took occasion, in the course of his speech on this subject, to allude to the fact that nobody but the Senator from Connecticut had scrutinized the provisions of this constitution, or claimed that it was not republican. It may be that the honorable Senator thought that so long as the objection was confined to that source, it was unnecessary to answer it. To disabuse the mind of the gentleman, should that have been his impression, I beg leave to call the attention of the Senate, and of the Senator from Missouri, to certain facts connected with the admission of his own State into this Union—facts which I am bound to presume are quite familiar to that honorable Senator, but had he reealled them to mind, he would not, as it strikes me, have disposed of the objections which I took to this constitution in quite so summary a manner, nor passed them by quite so speedily as altogether unfounded.

The Territory of Missouri, Mr. President, memorialized Congress in the month of December, 1819, through their Delegate in the House of Representatives, for authority to make a constitution preparatory to their admission as a State into this Union. The great question in both Houses of Congress was, whether an enabling act, as it is now, and was perhaps then called, should be passed, giving to Missouri such authority, without any restriction in regard to the subject of slavery? The Senate passed an act of that sort, without sueh a restriction. They added, however, to it, by way of amendment, a section prohibiting domestic slavery north of the line of 36° 30′ in all the territory which was aequired by the Louisiana purchase. This amendment was made part of the enabling act in the Senate by a vote of 34 yeas to 10 nays. The bill as thus amended, was engrossed and passed. The vote on the engrossment was 24 yeas to 20 nays, two gentlemen only—Mr. Macon, of North Carolina, and Mr. Smith, of South Carolina—from the southern States voted against the bill. That bill went to the House of Representatives. They had already passed an enabling act, but with a restriction upon the people in regard to the subject of slavery. They therefore struck out the proviso, or rather the amendment of the Senate, prohibiting slavery north of 36°30′, by a vote of 159 yeas to 18 nays. The House, for a time, persisted in the restriction forbidding slavery in the new State, but finally struek it out, by a vote of 90 yeas to 87 nays. They then concurred with the Senate in passing the bill with an amendment prohibiting slavery north of 36° 30′, by a vote of 134 yeas to 42 nays. The bill thus became a law, and went into effect on the 6th of Mareh, 1820.

Up to this time, Mr. President, no constitution was before Congress from the State of Missouri, and it was a matter of conjecture entirely what would be the character of the constitution which that State would adopt. It was believed that the people would prefer establishing slavery within the new State; and this act, thus passed, was supposed to give the assent of Congress to the formation of such a constitution. It was the expectation of Congress, and of the country, that when it should come, as it did come the next session of Congress, with a constitution, although there might be a clause establishing slavery in the new State, it would nevertheless be admitted into the Union.

Congress came together in the month of November, 1820, and Missouri came with her constitution asking admission. There was, however, in her constitution, in addition to the clause in

regard to slavery, which was anticipated, and which had been, under these circumstances, consented to, a clause making it the incumbent duty of the Legislature of the State of Missouri, after this constitution should have been adopted and the State organized and have a Legislature, to pass laws prohibiting the immigration of free persons of color into the new State. That feature of the constitution of Missouri was regarded by a large portion of the members of Congress in both Houses as being an infringement of the provision of the Constitution of the United States which declares that the citizens of each State shall be entitled to the privileges and immunities of citizens in the several States; and although the contest in regard to the question of domestic slavery in Missouri was over and gone, a contest arose in regard to that feature of the constitution of Missouri, scarcely less exciting than the original controversy on the subject of slavery. The result arrived at in the two Houses was this: In the Senate the constitution was referred to a committee to ascertain and report whether the constitution was conformable to the act, and whether, under those circumstances, the State was entitled to be admitted. The Senate committee reported favorably. The question on the passage of a resolution admitting the State being before the Senate, Mr. Eaton, of Tennessee, moved an amendment to the resolution, which was in fact a *careat*, that nothing in the resolution should be construed to imply that Congress meant to give its assent, or in any way admit the validity, of any clause in the constitution of the proposed new State which should infringe at all upon the Constitution of the United States. That resolution, so amended, passed the Senate, and went to the House. In the House it was referred to a select committee of thirteen, at the head of which was Mr. Clay. The committee reported in favor of the passage of the resolution. The House, however, refused to accept the report, and the resolution was lost by a vote of 80 yeas to 83 nays. In this state of things conferences were had between the two Houses, and the result finally was the passage of the resolve which admitted the State of Missouri. I will ask the Secretary to read that resolution.

The Secretary read it, as follows:

"Resolution providing for the admission of the State of Missouri into the Union on a certain condition.

"*Resolved by the Senate and House of Representatives of the United States in Congress assembled*, That Missouri shall be admitted into this Union on an equal footing with the original States, in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen, of either of the States in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States: *Provided*, That the Legislature of the said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said State into this Union shall be considered as complete."

Mr. FOSTER. That resolution was passed by the House by a vote of 87 yeas to 81 nays, and also in the Senate by a vote of 28 yeas to 14 nays. Now, sir, what I want to call the attention of the Senate to in this connection is this: the feature in the constitution of the State of Missouri, it will be noticed, was one simply requiring the Legislature to pass certain laws, excluding persons of a certain class from coming within the jurisdiction of the State, and that provision was deemed so obnoxious, that Missouri could not obtain admission into the Union until her admission was qualified according to the terms of that resolution, making it incumbent upon the people of the State, through their Legislature, to assent to an entire abrogation of that provision. Congress did not assume the right of amending that constitution, or stating how it was to be construed, as I understand gentlemen very gravely propose to do here. They did this: they made the admission of Missouri dependent on the fact that the people of the Territory, through the Legislature, in fact through the convention, should consent to erase the obnoxious feature from their constitution; and Missouri did it. Otherwise, *non constat*, she never would have been a State of this Union; certainly she would not under that resolution.

Now, Mr. President, when I took exception the other day to the feature of the constitution of Kansas which said, in express terms, no free black shall be permitted to live in this State under any circumstances, the honorable Senator from Missouri disposed of it in the unceremonious manner I have described. I think, in view of these facts regarding his own State, the objection is not got rid of so easily. If Congress, in 1820, would not admit a State until they abrogated a provision saying that the Legislature should pass a law excluding free blacks—if that created so much excitement then, and if the result to which I have called attention was arrived at then, I beg to know whether the fact that this constitution for Kansas contains so obnoxious a feature as this is not an objection entitled to some weight? So thought the Congress of 1820. I repeat again, the feature in the constitution of Missouri was much less obnoxious than this. If Congress, in 1820, required the abrogation which that resolution did require of the State of Missouri, prior to its admission, *à fortiori* should we require an abrogation of this clause in the constitution of Kansas before that State can be admitted, or that Territory, more properly speaking, can be admitted as a State.

The question then, and now, is wholly independent of the question of slavery. Why, sir, many of the men who, at the session of Congress ending in the spring of 1820, voted for the bill enabling the Territory of Missouri to form a constitution preparatory to her admission as a State in effect tolerating slavery, afterwards uniformly voted against the admission of Missouri under the constitution which she brought, not on account of slavery, but on account of this clause. Mr. Storrs, of New York, a leading member of the House of Representatives, having few superiors in that House or the country, was one of that class. He insisted that free blacks were citizens; that there was no distinction among native freemen, whatever their color, in this country, so far as citizenship was concerned. So thought many other leading and distinguished men, and the contrary was very faintly asserted by anybody. True, it was by some, but it was not resisted on

that ground. Members, and distinguished members of the House, insisted upon it that granting that free blacks were citizens, the State ought to be admitted and Congress could not take exception to that clause. The great majority, however, thought otherwise. I will not pursue this subject further, except merely to add that on this question of citizenship, which has latterly become a topic of great interest, I say so faintly was it asserted in any quarter at that time that free blacks were not citizens, that Mr. Hemphill, of Pennsylvania, said that he understood the report, recommending the admission of the State, to admit that free blacks were citizens, although a majority of the committee were, of course, in favor of the admission, and spoke, it may be presumed, the opinions of their party. I am by no means, however, disposed to go over the ground which I went over the other day, and should not have alluded even to this had it not been for the remark of the Senator from Missouri.

I come to the result, then, Mr. President, that the constitution before us is not an embodiment of the people's will; that it contains provisions not in harmony, but directly repugnant to the principles on which our Government rests; and for these reasons this Territory ought not to be admitted as a State. What excuses are urged why it should be admitted? There are many. Among them are, it will give peace, calm the agitation, quiet the troubled sea on which we are now tossed. Mr. President, it is not a statesmanlike reason for doing a legislative act. We should be just and fear not. Besides, I do not believe that the passage of this bill, and the admission of this Territory under this constitution, will give peace —nay, sir, I believe it will give the sword. I do not urge that as a reason why we should not pass it, for I do not propose to address any argument to any gentleman's fears. It is merely in reply to an argument urged on us to vote for it, that it will give peace, and for no other purpose. I disclaim any appeal whatever to the fears of any gentleman. While I disclaim an appeal to the fears of any one, I must also say, that any arguments addressed to fears on the other side have very little weight with me. It is said that certain sections of the country will be so dissatisfied that they will secede from the Union if this bill should not pass, and Kansas should not be admitted. All that weighs very little with me. It is no argument. What weight has it? It is lighter than a feather shaken from a linnet's wing.

But we are told, if it is distasteful to the people, they can change it. Is that an argument for imposing a constitution or a law upon a people, that, if unsatisfactory, they can change it? Why, sir, the same remark would hold true of any despotism on the face of the earth. The people under the sway of the Czar of Russia can change their Government if they wish to. So can the people of Turkey; the people of France; the people of any Government, no matter what its principles are. If the people choose to rise up, they can change their Government; but do they? can they, practically? At all events, is it an excuse for those who tyrannize over them, that if the people are not satisfied, they have the power to make a revolution? Are we about to impose a constitution on a people, and say, "we do not know whether you are in favor of this constitution or not; we incline to think you are not; but if you do not like it, we impose it upon your necks, and you have nothing to do but to change it?" That, sir, is an argument from statesmen to statesmen in the Senate of the United States! That the people cannot, except by revolution, change this constitution in any mode differing from the mode specified in it, has been shown.

But then it is proposed, as I understand it, to amend the bill which we pass so as that this constitution shall be made more acceptable, more tolerable, better than it is. I ask where is the power in this body, or in Congress, to change one letter of that constitution, to alter it, to construe it, or to affect it directly or indirectly? We are, it is true, if we pass this measure, assuming a power which would imply that; and we might just as well make a constitution for them, and say, "this is your law, live under it," as to do what, if we pass this bill, we shall do; but after all, does any man, or can any man claim, under our Constitution and laws, that we have one jot or tittle of authority to touch the provisions of that constitution in any manner? I utterly deny any such power to this body. It does not exist. The constitution which comes here we must leave just as it is, and admit or reject the State, leaving the constitution just as it is; or if we make any amendment, or propose any alteration, we can only refer the subject back to the people that they may come in as a State with a constitution satisfactory to us, indeed, but nevertheless made altogether by themselves.

There is another reason assigned for this measure, and that reason is found more fully and explicitly stated in the resolutions of an assemblage of highly respectable gentlemen who met at Tammany Hall, in the city of New York, on the 4th of March, on this subject. At the close of the resolutions by that assemblage of citizens where they give their reasons one after another why Congress, in their judgment, ought to admit Kansas under that constitution, the climax of reasons is this:

"Because James Buchanan, the President of the United States, recommends it. Elevated to a position which enables him most accurately to ascertain the exact truth amid the conflicting statements coming from heated partisans in that distant frontier of the Union," &c.

That, sir, I repeat, is the climax of reasons which I have heard why the Congress of the United States should admit Kansas into the Union as a State under this constitution. It amounts to this: the party require this act to be done; and the President is so situated that he can know the real truth about this matter better than anybody else. In regard to the requirements and the discipline of party, it does not become me, who am an outsider in that particular, so far as the party alluded to is concerned, to say much. I will only say, from my observation of the operations of party on this subject, your party, a short time ago, read gentlemen who were veterans—who had borne the burden and heat of the day under the Democratic banners—out of the party, because they disapproved of the Kansas-Nebraska bill, and were honestly opposed to it. It now, as I understand it, proposes to read men of like character out of the party, because they are honestly in favor of the same measure. If, under such circumstances, men can keep afloat on the cur-

rent of party, I bid them God speed on their voyage.

The other reason, that the President is so situated that he can learn the exact truth and know all about this measure from the distant frontier in consequence of his elevated position, I must say, had it not come from gentlemen who certainly are entitled to respect, I should have thought the most frivolous, I was going to say the most ridiculous, of all statements that I ever heard made. The position of the President of the United States one peculiarly well fitted for learning the truth in regard to a political question! Why, sir, king's palaces are not proverbial for the amount of truth that is uttered in the ears of the king. Indeed, it is probably one of the most repulsive features that surround a man having the kingly office, that from the day of his birth to the day of his death he never hears the honest, simple truth spoken. The President of the United States, it is true, is not a king; but some of the incidents attaching to kings attach to him, and one of those incidents is that he is less likely than almost any other man in the nation to hear the truth spoken. Who are the men that surround him, and what are their purposes and objects? To speak the truth? Does he hear the truth from them? Oh no, sir. They are men having other purposes and other objects than to tell the truth. They have an eye to fat contracts, to gifts, and emoluments. They do not go there to offend the ear of majesty by speaking the truth, unless it should be pleasant to the ear of majesty to hear it. About king's courts, and, I fear, about presidential mansions, there are many who may, without impropriety, be styled toads, who live upon the vapor of the palace. They may have the precious jewel of truth in their heads, but they are specially cautious not to have it on their tongues.

I come, Mr. President, to the result that the excuses urged for the passage of this measure are frivolous, unsatisfactory, untrue. They form no excuse whatever for doing an act which I have before characterized as being despotic and tyrannical. Without occupying the time of the Senate further, I say, then, that my objections to this constitution rest mainly on the fact that it does not embody the will of the people, and is not in harmony with the principles on which our Government rests. For either of these objections I should deem it my duty to stand here in opposition, by my voice and by my vote, to prevent the adoption of the measure. The question of slavery, in one point of view, I pass by altogether. It may be that because slavery is in this constitution the people of Kansas are opposed to it. Of that they are better judges than I. My objection to imposing this constitution upon them is that they are opposed to it. Sir, if it had not one word in it about slavery—on the other hand, if it had a clause abolishing slavery within that Territory forever—if I was as well satisfied that that constitution was as distasteful to the people of that Territory as I am satisfied this is, I would oppose it with the same earnestness that I oppose this. I repeat, I do not know but that it is their objection that slavery is in it. My objection is that they object to it; and I would as strongly resist imposing a constitution on them which made their Territory a free Territory forever, as I would resist the adoption of a constitution imposing slavery upon them, because it would be an act of usurpation in both cases.

Mr. POLK. Will the gentleman allow me to interrupt him for a moment?

Mr. FOSTER. Certainly.

Mr. POLK. I desire to ask the Senator from Connecticut whether he would vote for the admission of Kansas under any circumstances, if her constitution tolerated slavery?

Mr. FOSTER. I have said that I should not. If the gentleman doubts whether he has convinced me, I repeat that I certainly would not.

Mr. POLK. If I had so understood the Senator, I would not have asked the question.

Mr. FOSTER. I stated so the other day, and I repeat it now. I could not, consistently with what I believe to be due to that Territory, vote for the extension of slavery over the line of 36° 30'. I went somewhat at length into that question the other day. I will not repeat now the arguments I then made, but my views are unaltered. I was saying at the present time, that if this constitution was perfectly unexceptionable in regard to the matter of slavery, and if it had a clause in it prohibiting slavery within the Territory forever, still, if I was as well satisfied as I am now that the people of the Territory disapprove this Lecompton constitution, I would not vote to impose it on them. By that I stand, and I stand by the principle also to which the honorable Senator from Missouri has called my attention, namely: the exclusion of slavery from the future States of Kansas and Nebraska.